

## **Chapter 38.5 VEGETATION\***

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\*Cross references: Clearance of tree limbs above street or sidewalk, § 35-14; hedges, plantings, etc., obstructing visibility at intersections, § 35-14.1.

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Art. I. In General, §§ 38.5-1--38.5-15

Art. II. Weeds as Public Nuisance, §§ 38.5-16--38.5-22

Art. III. Landscaping, §§ 38.5-23--38.5-29

Art. IV. Hazardous Tree Removal, §§ 38.5-30--38.5-34

ARTICLE I. IN GENERAL

Secs. 38.5-1--38.5-15. Reserved.

ARTICLE II. WEEDS AS

PUBLIC NUISANCE\*

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\*State law references: General authority of City with respect to removal of weeds, Code of Virginia, § 15.2-1115.

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### **Sec. 38.5-16. Definitions.**

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abatement cost means the City's cost of labor, equipment, and supplies for, or the contract price of, and any charges to the City, with respect to its removal and disposal of weeds from a parcel.

Occupant means any lessee, tenant or other person, other than an owner, occupying or having the right to occupy a parcel.

Owner means any person shown by any public record maintained by any Circuit Court, General District Court, Treasurer, Commissioner of the Revenue, City Clerk, or any other official record to have an ownership or possessory interest in real estate located in the City; or any successor in title or interest taking with actual or constructive notice of the existence of a public nuisance.

Parcel means any tract or parcel of land as described in the deed of the current owner or as shown on any recorded plat or on a current tax map, lying in the City and identified by a City official tax number.

Person means any natural person, partnership, corporation, trust, or any other entity capable of owning an interest in real estate.

Weeds means any plant, grass, or other vegetation of uncontrolled growth over twelve (12) inches high, other than trees, shrubbery, agricultural plants, or flowering landscaping with controlled growth, and excluding therefrom the following:

- (1) Growth located on banks of continually flowing streams.
- (2) Natural and undisturbed slopes of a vertical angle of thirty (30) degrees or greater.
- (3) Cliffs, bluffs, ravines, and other similar areas with vegetation foliage.
- (4) Natural and undisturbed wooded areas.

(Ord. No. 84-6.21, § 17-114, 6-19-84; Ord. No. 89-11.9, 11-9-89; Ord. No. 90-2.9, 2-6-90; Ord. No. 90-4.9, 4-17-90)

**Sec. 38.5-17. Nuisance declared.**

(a) It shall constitute a public nuisance for an owner or occupant of any parcel to permit weeds to grow thereon within one hundred twenty-five (125) feet of a residential, commercial or industrial structure designed and constructed for human occupancy or within such distance of such structure on the public right-of-way between such a parcel bordering on a public street and the curb line or pavement edge of the street.

(b) It shall be unlawful for any owner or occupant of a parcel to cause or allow a public nuisance as described in this section to exist with respect to such parcel or such area of public right-of-way. An owner or occupant of such a parcel shall abate any such public nuisance on said parcel and where required on any public right-of-way bordering such parcel.

(Ord. No. 84-6.21, § 17-115, 6-19-84; Ord. No. 89-11.9, 11-9-89; Ord. No. 90-2.9, 2-6-90; Ord. No. 90-4.9, 4-17-90)

**Sec. 38.5-18. Duty of property owner or occupant to remove weeds.**

Whenever weeds on any parcel constitute a public nuisance under the provisions of section 38.5-17, the owner or occupant of such real estate situated in the City shall, at his sole expense, abate such nuisance and cause to be removed from his property and where required from the public right-of-way bordering his parcel all such weeds.

(Ord. No. 84-6.21, § 17-116, 6-19-84; Ord. No. 89-11.9, 11-9-89; Ord. No. 90-2.9, 2-6-90; Ord. No. 90-4.9, 4-17-90; Ord. No. 93-12.15, § 1, 12-7-93)

**Sec. 38.5-19. Excessive growth of weeds or grass.**

(a) Upon determination by the Director of Public Works, or his designee, that there exists on any parcel within the City, including the area between such land or premises and the curblin, any weeds in excess of twelve (12) inches in height and constituting a public nuisance under the provisions of section 38.5-17, notice shall be served on the owner of such parcel or his agent, or on the occupant thereof, or both, to cause such weeds to be cut and removed from such land or premises within ten (10) days from the date of such notice.

(b) Service of the notice provided for in subsection (a) shall be by first class mail, personal delivery or posting in a conspicuous place upon the parcel; provided, however, that if the parcel is unoccupied and the owner or his agent cannot be found by the exercise of due diligence or are unknown, such notice shall be sufficient against the owner if given by first class mail to the owner's last known mailing address and posted in a conspicuous place upon the land or premises. The Director of Public Works, or his designee, is hereby authorized to deliver or post such notices.

(c) Failure to comply with the terms of a notice issued and served as provided in this section within the time prescribed in such notice shall constitute a Class 3 misdemeanor, and each day thereafter that the violation continues shall constitute a separate offense. In addition to any penalties imposed hereunder, the City may institute legal action to enjoin the continuing violation of this section and may remove or contract for the removal of such weeds, in which event the cost and expenses thereof, including an administrative fee in the amount of one hundred dollars (\$100.00), shall be chargeable to and paid by the owner or occupant of the parcel. Any such charge which is not paid within sixty (60) days of the date on which it is billed to the owner of such land or premises shall constitute a lien upon the property and may be collected in any manner provided by law for the collection of taxes, or in the same manner provided by law for liens of judgments; provided, however, that no such lien shall be valid

against any owner of a parcel who was not served with the notice prescribed in subsection (a) hereinabove.

(d) Upon receipt of the written notice described above, the property owner may appeal the order to the City Manager. Such appeal must be made in writing during the ten-day interval given in the notice from the Director of Public Works, or his designee. Any actions required in the notice shall be delayed pending the City Manager's response to the appeal.

(Ord. No. 84-6.21, § 17-117, 6-19-84; Ord. No. 89-11.9, 11-9-89; Ord. No. 90-4.9, 4-17-90; Ord. No. 93-12.15, § 2, 12-7-93; Ord. No. 96-6.3, 6-4-96; Ord. No. 96-8.8, 8-6-96)

**Sec. 38.5-20. Abatement of public nuisance--Generally.**

(a) If the owner or occupant fails to abate the public nuisance as required, the Director of Public Works shall use City forces to abate the nuisance or, at his option, the Director of Public Works may contract for this abatement on behalf of the City with a private contractor.

(b) Any owner or occupant may abate the public nuisance himself without liability to the City, provided that he does so prior to commencement of abatement by City personnel or contractors.

(Ord. No. 84-6.21, § 17-118, 6-19-84; Ord. No. 86-7.6, 7-1-86; Ord. No. 89-11.9, 11-9-89; Ord. No. 90-4.9, 4-17-90; Ord. No. 96-8.8, 8-6-96)

**Sec. 38.5-21. Same--Accounting for costs.**

The Director of Public Works shall keep an account of the cost of abating public nuisances under this article and embody such account in periodic reports with assessment lists which shall be transmitted to the City Clerk and the Director of Finance at convenient intervals. The copy retained by the City Clerk shall be available for public inspection. The report shall refer to each parcel as to which a public nuisance was abated, by description sufficient to identify the parcel, and specify in addition to the cost of abatement an additional charge for each such parcel to be assessed against the owner or owners an administrative fee of one hundred dollars (\$100.00).

(Ord. No. 84-6.21, § 17-119, 6-19-84; Ord. No. 90-4.9, 4-17-90; Ord. No. 93-12.15, § 3, 12-7-93)

**Sec. 38.5-22. Same--Collection of assessments; lien upon property; recordation and foreclosure of lien.**

(a) The Director of Finance or his designee shall bill the owner or occupant of the land assessed with the costs of abatement, for the costs of such abatement and for the administrative fee as shown on the assessment report.

(b) Whenever a bill for such assessments remains unpaid for sixty (60) days after the billing date, the City Clerk shall record with the Clerk of the Circuit Court a statement of lien claim. This statement shall contain a description of the premises and the expenses and costs incurred, including but not limited to the costs of recordation. A copy of this statement shall be mailed to the owner or occupant if his address is known. Provided, however, that failure of the City Clerk to mail such statement, or the failure of the owner or occupant to receive such notice, shall not affect the right to foreclose the lien for these assessments as provided in this section.

(c) That the costs and expenses incurred by the City in such weed abatement, including the administrative fee, with which the owner and lien holder of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on parity with liens for unpaid local taxes and enforceable in the same manner as provided in articles 3 and

4 of chapter 39 of title 58.1 or in the same manner provided by law for liens of judgment. The City Attorney is hereby authorized and directed to institute such proceedings in the name of the City in the Circuit Court for the City of Danville against any property for which the bill has remained unpaid sixty (60) days after it has been rendered.

(Ord. No. 84-6.21, §§ 17-120, 17-121, 6-19-84; Ord. No. 89-11.9, 11-9-89; Ord. No. 90-4.9, 4-17-90; Ord. No. 93-12.15, § 4, 12-7-93)

### **ARTICLE III. LANDSCAPING**

#### **Sec. 38.5-23. Definitions.**

[The following terms, when used in this article, shall have the meanings ascribed to them in this section, unless context clearly indicates a different meaning:]

City shall mean the City Administration and/or City Council, unless the context in which the term is used indicates otherwise.

Maintenance shall include all operations of trimming, pruning, spraying, injecting, fertilizing, treating, bracing, doing surgery work, cutting above or below the ground.

Public area shall include all public land, easements, and rights-of-way owned or held by the City, including easements and rights-of-way for streets, alleys, sidewalks, utility lines and facilities, median strips and other City facilities. This does not include public parks, playgrounds, and other properties controlled and maintained by the Parks and Recreation Department.

Public utility company shall mean any corporation, company, individual, association, or cooperative that is a "public utility" as defined in section 56-232 of the Code of Virginia, 1950, as amended.

Tree and/or shrub shall include all woody vegetation presently or hereafter planted on any public area.

(Ord. No. 92-11.15, 11-5-92; Ord. No. 2001-05.07, § 8, 5-15-01)

#### **Sec. 38.5-24. Authorization required.**

(a) No person shall plant vegetation or maintain, remove, or otherwise disturb, any tree or shrub on any public area without first receiving approval from the Director of Public Works or his designate.

(b) Public utility companies and municipal utilities and their subcontractors employing tree experts, when engaged in the maintenance of easements, shall be exempt from the provisions of this section.

(c) In case of emergencies, such as windstorms, ice storms, or other disasters, permits may be waived by the Director of Public Works during the emergency period so as not to hamper work to restore order to the City.

(d) Maintenance of public areas by the City or its subcontractors shall be exempt from the provisions of this section.

(e) All plantings installed on land owned by the City shall become the property of the City of Danville and under the control of the City and subject to all regulations of the City thereafter.

(f) Notwithstanding the foregoing, no authorization shall be required for any planting in a City street, sidewalk, or alley right-of-way immediately contiguous to privately owned residential or commercial property, provided that:

(1) If it is contiguous with residential property, the person making the planting maintains the property as he does his property;

(2) If it is contiguous with commercial property, the person making the planting maintains the property as his place of business; and

(3) The planting does not violate any other provision of this Code including, but not limited to, section 35-14.1 of this Code.

(Ord. No. 92-11.15, 11-5-92)

#### **Sec. 38.5-25. Enforcement.**

The Director of Public Works shall have the general powers and duties to:

(1) Direct, manage, supervise, and control the City landscape program to include all plantings, removal, maintenance, and protection of all trees and shrubs on all public areas.

(2) Guard all vegetation on any public area within the City so as to prevent the spread of disease or pests and to eliminate dangerous conditions which may affect the health, life, or safety of persons or property.

(3) Administer the provisions of this article.

(4) Accept requests for planting, removal or maintenance of plantings on any public area, and accept or deny the request as required by the provisions of this article.

(5) Remove vegetation placed on a public area without approval, where approval is required by the provisions of this article.

(Ord. No. 92-11.15, 11-5-92)

#### **Sec. 38.5-26. Abuse or mutilation of public trees or shrubs.**

Unless specifically authorized by the Director of Public Works, no person shall intentionally damage, cut, carve, transplant, or remove any tree or shrub on land owned by the City or a City street, sidewalk, or alley right-of-way; attach any nails, advertising posters, or other contrivance to any public tree or shrub on land owned by the City or a City street, sidewalk, or alley right-of-way; allow any gas, liquid, or solid substance which is harmful to such trees or shrubs to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree or shrub on land owned by the City or a City street, sidewalk, or alley right-of-way.

(Ord. No. 92-11.15, 11-5-92)

#### **Sec. 38.5-27. Protection of trees.**

(a) All trees on any land owned by the City or a City street, sidewalk, or alley right-of-way near any excavation or construction of any building, structure, or street work, shall be guarded with a good substantial fence, frame, or box not less than four (4) feet high, and all building material, dirt, or other debris shall be kept outside the barrier.

(b) No person, including public utility companies and City departments and utilities, shall excavate any ditches, tunnels, trenches, or lay any drive within a radius of ten (10) feet from any tree on land owned by the City or a City street, sidewalk, or alley right-of-way without first obtaining authorization from the Director of Public Works.

(c) All trees on public areas shall, to the degree practical, be pruned or trimmed only in accordance with the standards established by the National Arborist Association, entitled "Pruning Standards for Shade Trees", as revised in 1988. This includes all public utility companies and City departments involved in maintenance of easements.

(Ord. No. 92-11.15, 11-5-92)

**Sec. 38.5-28. Removal and maintenance.**

(a) The City will provide maintenance or removal of dead or diseased trees or shrubs on land owned by the City or a City street, sidewalk, or alley right-of-way when such trees or shrubs are determined by the City to constitute a hazard to life, health, or property.

(b) No person shall remove trees or shrubs from land owned by the City or a City street, sidewalk, or alley right-of-way for any purpose without first procuring authorization from the Director of Public Works. The person who obtains such authorization shall bear the cost of removal if it is determined that the tree or shrub does not present a hazard to person or property.

Sec. 38.5-29. Reserved.

**ARTICLE IV. HAZARDOUS TREE REMOVAL**

**Sec. 38.5-30. Nuisance declared.**

Any tree which, by virtue of its condition and location, endangers the life, health, or safety of any person or structure on adjacent or adjoining real property is hereby declared to be a public nuisance and prohibited.

(Ord. No. 95-4.16, 4-4-95)

**Sec. 38.5-31. Abatement of public nuisance.**

(a) If a tree which constitutes a public nuisance is located on real property which is not owned by the City, the Director of Public Works, or his designee, shall notify the owner of such tree in writing by certified mail, return receipt requested, to the address of the owner shown on the records in the office of the City Real Estate Assessor, citing the tree's condition and the corrective action required to remove the public nuisance. If such owner cannot be identified or found, a copy of such notice shall be placed upon such tree or part thereof. Written notice shall also be given to any tenant leasing such property.

(b) Upon receipt of the written notice described above, the property owner may appeal the order to the City Manager. Such appeal must be made in writing during the fifteen-day interval given in the notice from the Director of Public Works, or his designee. Any actions required in the notice shall be delayed pending the City's Manager's response to the appeal.

(c) If any work required to be done by the Director of Public Works, or his designee, is not accomplished within the time specified, the Director of Public Works shall request the City Attorney to institute a suit for an injunction to compel the responsible party to abate or remove the public nuisance and/or see that such responsible person is prosecuted for violation of section 38.5-30.

(d) If the tree constituting a public nuisance presents an imminent and immediate threat to life or property, then the Director of Public Works is authorized and directed to abate or remove such public nuisance and to request the City Attorney to bring an action against the responsible party to recover the necessary costs incurred for the provision of emergency services reasonably required to abate any such public nuisance.

(e) The term "responsible party" shall include, but not be limited to, the owner, occupier, or possessor of the premises where the nuisance is located.

(Ord. No. 95-4.16, 4-4-95)

**Sec. 38.5-32. Severability.**

The provisions of this article are severable. If any provision of this article or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article that can be given effect without the invalid provision or application.

(Ord. No. 95-4.16, 4-4-95)

**Sec. 38.5-33. Penalty.**

Any person, firm, or corporation violating the provisions of section 38.5-30 after receiving the notice described in section 38.5-31 shall be fined not less than five dollars (\$5.00) nor more than five hundred dollars (\$500.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

**Sec. 38.5-34. Liability.**

Once an owner of the property where a tree described in section 38.5-30 is situated has been notified by the Director of Public Works, as required in section 38.5-31, such owner will not be relieved from liability from damages resulting from a tree constituting a public nuisance. In no event will the City be held liable for damages resulting from a tree constituting a public nuisance located on private property.

(Ord. No. 95-4.16, 4-4-95)